

COMMITTEE BILL ANALYSIS

Bill: House Bill 764

Printer's No.: 1719

Sponsor: Rep. Watson

Prepared by: Gregg Warner

Synopsis: This bill amends the Crimes Code, Title 18, and the Judicial Code, Title 42 of the Pennsylvania Consolidated Statutes, to establish the criminal offense of online impersonation and to create a civil action to recover damages for online impersonation, respectively.

Summary: The bill provides for the criminal offense of online impersonation and a civil action to recover damages for online impersonation.

Criminal offense (Title 18)

Under new section 4121 of the Crimes Code, a person commits the offense of online impersonation if the person does both of the following:

- (1) Uses the name, persona or identifying information of another person or of a fictitious person to create a web page; post one or more messages on a commercial social networking site; send an electronic mail, instant message, text message or similar communication; open an e-mail account; or open an account or profile on a commercial social networking site.
- (2) Engages in activity prohibited under section 2706 (relating to terroristic threats); section 2709 (relating to harassment); section 2709.1 (relating to stalking); section 4952 (relating to intimidation of witnesses or victims); or section 4953 (relating to retaliation against witness, victim or party).

Grading

The criminal offense of online impersonation is graded as a misdemeanor of the second degree or one degree higher than the classification of the underlying offense set forth in paragraph (2), whichever is greater. Each violation constitutes a separate offense.

Other provisions

This section shall not be construed to apply to works of public interest, including commentary, satire and parody. A person may be convicted under the provisions of this section if the victim or offender is located within Pennsylvania. The Attorney General shall have concurrent jurisdiction.

Civil action (Title 42)

Under new section 8316.1 of the Judicial Code, a person may bring a civil action based upon online impersonation as defined in 18 Pa.C.S. §4121 in order to recover damages for any loss or injury sustained as a result of the violation.

An action may be brought by a natural person; a parent or guardian of a natural person, if the natural person is incompetent or is an individual under 18 years of age; or a corporation, partnership, limited liability company, business trust, other association, estate, trust or foundation.

Damages

A court may award actual damages or \$500, whichever is greater. Damages include loss of money, reputation or property, whether real or personal. The court may award up to three times the actual damages sustained but not less than \$500. A court may award reasonable attorney fees and court costs, and any other relief the court deems necessary and proper.

Other provisions

This section shall not be construed to limit the ability of a person to receive restitution pursuant to 18 Pa.C.S. §1106 (relating to restitution for injuries to person or property).

This section shall not be applicable to a law enforcement officer acting in the course and legitimate scope of the law enforcement officer's duties or a person who acts within the course and legitimate scope of the person's employment in order to obtain evidence of unlawful activity.

Effective date

This act takes effect in 60 days.

Background: The House of Representatives passed House Bill 764 on May 15, 2013 by a vote of 196 to 0.

According to the sponsor, "This initiative is in response to an incident wherein one of my constituents, a public school teacher, discovered that two students had created an e-mail account in her name and used it to harass another student. Local police investigated the incident and the account was shut down. However, the DA's office indicated that the students could not be charged under PA's Identity Theft statute as the teacher had not 'suffered a [monetary] loss.'

I believe that there should be consequences to this type of action, which has the effect of causing embarrassment and harm to the reputation of the person whose identity has been utilized, as well as misleading any persons who receive or access the false information or material. Similar legislation was enacted in California in January 2011."

Section 4121 is generally modeled after 18 Pa.C.S. §4120 (relating to identity theft). Section 8316.1 is generally modeled after 42 Pa.C.S. §8315 (relating to damages in actions for identity theft) and §8316 (relating to unauthorized use of name or likeness).

A misdemeanor of the second degree is punishable by imprisonment not exceeding two years or a fine not exceeding \$5,000, or both. 18 Pa.C.S. Ch. 11

Legislative history

Last session this legislation was introduced as House Bill 2249. The House of Representatives passed House Bill 2249 by a vote of 196 to 1. The Senate Judiciary Committee reported House Bill 2249 from committee. The Senate tabled the bill at the end of the session.